Lee Hun Hoe C.J. (Borneo) (delivering the Judgment of the Court): We consider that the summing-up as a whole is inadequate for the jury to reach a proper verdict on the evidence. The summing-up is too sketchy. The intention to kill was not properly explained to the jury. Also, the jury were not properly directed concerning the fundamental principle of our criminal law on the presumption of innocence.

With regard to the exceptions under section 300 of the Penal Code, it is clear that unless the act done constitutes, at least *prima facie*, murder by reason of the intention with which it is found to be done, the learned Judge need not have to direct the jury to consider them.

In our view an offence may amount to culpable homicide under section 304 of the Penal Code even though it does not come within any of the exceptions under section 300 of the Penal Code. If the exceptions under section 300 are not applicable then the learned Judge should not refer to them as they may confuse the jury in their consideration. There is no doubt that the deceased was killed as a result of the injuries which were clearly not accidental.

In the summing-up nothing was said about the caution statement. Having admitted it the learned Judge should inform the jury that the caution statement was part of the prosecution case. It is their duty to consider the truth of the statement and the weight to be given to it. If the jury was properly directed on the question of intention the result might well be different. However, it is difficult to say whether the appellant acted with the intention of causing such bodily injury as he knew to be likely to cause death or as is sufficient in the ordinary course of nature to cause death.

Although we consider the summing-up inadequate we do not think the appellant is entitled to be acquitted on the evidence. We would allow the appeal by setting aside the conviction and sentence of death by substituting a conviction for culpable homicide under section 304 of the Penal Code and sentence of ten years' imprisonment from the date of arrest.

Order accordingly.

Solicitors: *Gunaretnam & Co.*

PUBLIC PROSECUTOR v. MUSTAFFA BIN AHMAD

[O.Cr. J. (Ibrahim J.) January 9, 1977]

[Johore Bahru – Criminal Trial No. 2 of 1976]

Criminal Law and Procedure – Possession of firearms and ammunition – Charges under Internal Security Act 1960 – Preliminary objections to charges – Cautioned statement – Admissibility and voluntariness – Reliability of prosecution witnesses – Discrepancies – Accused's evidence preferred – Internal Security Act 1960, ss. 47, 57 & 75 – Essential (Security Cases) Regulation 1975, regs. 13, 17 & 24 – Federal Constitution, arts. 8(1) & 145(3) – Criminal Procedure Code (F.M.S. Cap. 6), s. 376(i) & (iii) – Revision of Laws Act, 1968, s. 12 – Interpretation Act, 1967, ss. 28 & 35(2).

Constitutional Law – Equality before the law – Discretion of Attorney-General over control and direction of criminal prosecution – Federal Constitution, arts. 8(1) & 145(3).

In this trial, the accused is charged with the commission of two offences under the Internal Security Act, 1960, one under s. 57(1)(a) for the possession of .22 Double Barrel Pistol and the other under s.57(1)(b) for the possession of 5 rounds of .22 ammunitions.

The accused raised two preliminary objections, contending: First, that Article 8(1) of the Federal Constitution had been contravened because no reason has been given by the prosecution why the accused had been charged under the Internal Security Act, 1960, when there are two other laws relating to possession of firearms, *i.e.* the Arms Act No. 21/60 and the Firearms (Increased Penalties) Act No. 371/71; and secondly, the proclamation of all areas in the Federation to be security areas for the purposes of Part II of the Internal Security Act ("the Act") made by the Yang di-Pertuan Agong under s. 47 of the Act is no longer valid because the said s. 47 and s. 57 of the Act now come under Part III thereof.

Prosecution evidence shows *inter alia* that, according to PW1, who had received information which he did not reduce to writing, the accused said that he had kept a double-barrel .22 pistol in a certain house, where the accused led PW1 to a cupboard. The accused opened the cupboard door and pointed to a clothings compartment where PW1 recovered a .22 double-barrel pistol (P2) and 5 rounds of .22 ammunitions (P3) on January 8, 1976. The accused had no licence for these. PW1 lodged a police report and on January 9, 1976 handed the accused to PW13, who recorded (P11) from the accused on January 13, 1976 a cautioned statement, the voluntariness of which was disputed.

Held: (1) article 8(1) of the Federal Constitution had not been contravened in view of the provisions of s.376(i) and (iii) of the Criminal Procedure Code and article 145(3) of the Constitution;

(2) on the 2nd preliminary objection, the Proclamation is valid in view of the provisions of s. 12 of the Revision of Laws Act, 1968, and ss. 28 and 35(2) of the Interpretation Act 1967;

(3) no weight should be given to the information received by PW1 as he had not reduced it to writing as his memory does not appear to be reliable;

(4) there is contradiction between the evidence of PW1 and PW4 as to what the accused actually said and as to the recovery of the exhibits. These are material discrepancies, and considering the evidence as a whole, the learned trial judge was inclined to accept the accused's version of what had happened;

(5) after hearing the evidence as a whole, the learned judge was no longer satisfied beyond reasonable doubt that the cautioned statement was voluntarily made by the accused;

(6) accordingly the accused was acquitted and discharged on both the charges.

[*Editorial Note:* The appeal by the Public Prosecutor was dismissed by the Federal Court (Suffian L.P., Gill C.J. (Malaya), Lee Hun Hoe C.J. (Borneo), Raja Azlan Shah & Wan Suleiman F.JJ.) on January 23, 1978, *vide* F.C.Cr. A. No. 7/77. No written judgment was delivered. Encik Mohamed Noor bin Haji Ahmad (Deputy Public Prosecutor) appeared for the appellant and Mr. R.K. Menon appeared for the respondent.]

Case referred to:

(1) *Long bin Samat & Ors.* v. *Public Prosecutor* [1974] 2 M.L.J. 152.

CRIMINAL TRIAL.

Lee Lim Huat (Deputy Public Prosecutor) for the Public Prosecutor.

R. K. Menon for the accused.

Cur. Adv. Vult.

Ibrahim J.: Accused is charged with 2 charges under section 57(1)(a) and (b) of the Internal Security Act, 1960 (Revised 1972) which as finally amended read as follows:

"1st Charge:

That you on the 8.1.76 at about 3.45 a.m. at a house No. 8B, Jalan Dato Dalam, Johore Bahru, in the District of Johore Bahru, in the State of Johore, within security area, as proclaimed by Yang DiPertuan Agong vide PROCLAMATION P.U.(A) 148/1969 without lawful excuse did have in your possession firearm, to wit, .22 Double Barrel "Rohm Sontheim/Brenz" Pistol No. 49424, without lawful authority, and you thereby committed an offence under section 57(1)(a) of the Internal Security Act, 1960 (Revised 1972) and punishable by the said section.

2nd Charge:

That you on the 8.1.76 at about 3.45 a.m. at a house No. 8B, Jalan Dato Dalam, Johore Bahru, in the District of Johore Bahru, in the State of Johore, within security area, as proclaimed by Yang DiPertuan Agong vide PROCLAMATION P.U. (A) 148/1969 without lawful excuse did have in your possession 5 rounds of .22 ammunitions without lawful authority, and you thereby committed an offence under section 57(1)(b) of the Internal Security Act, 1960 (Revised 1972) and punishable by the said section."

Before dealing with the evidence adduced in this case I shall first dispose of the two preliminary objections made by Defence Counsel.

It is contended that Article 8(1) of the Federal Constitution which provides that "All persons are equal before the law and entitled to the equal protection of the law" has been contravened because no reason has been given by the learned Deputy Public Prosecutor why the accused has been charged under the Internal Security Act 1960 (Revised 1972) when there are 2 other laws relating to possession of firearms, *i.e.* Arms Act No. 21/60 and Firearms (Increased Penalties) Act No. 371/71. I do not agree with this in view of the provisions of section 376(i) and (iii) of the Criminal Procedure Code which read as follows:

"(i) The Attorney General shall be the Public Prosecutor and shall have the control and direction of all criminal prosecutions and proceedings under this Code."

"(iii) The Public Prosecutor ... may appoint fit and proper persons to be Deputy Public Prosecutors who shall be under the general control and direction of the Public Prosecutor and may exercise all or any of the rights and powers vested in or exercisable by the Public Prosecutor or the Director of Public Prosecutions by or under this Code or any other written law except any rights or powers expressed to be exercisable by the Public Prosecutor or the Director of Public Prosecutions personally."

There is also Clause (3) of Article 145 of the Federal Constitution which reads as follows:

"(3) The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial"

and in *Long bin Samat & Ors.* v. *Public Prosecutor*[1] Suffian L.P. at page 158 said:

"In our view, this clause from the supreme law clearly gives the Attorney-General very wide discretion over the control and direction of all criminal prosecutions."

It is also contended that the Proclamation of all areas in the Federation to be security areas for the purposes of Part II of the Internal Security Act made by the Yang di-Pertuan Agong under section 47 of the said Act is no longer valid because the said section 47 and section 57 of the said Act now come under Part III of the said Act. I do not also agree with this in view of the provision of section 12 of the Revision of Laws Act, 1968 which reads as follows:

"12. Subsidiary legislation made under any law and in

force on the date on which the law as revised comes into force shall continue in force until otherwise provided; and references in any such subsidiary legislation to the law under which it was made, or to any part thereof, or to any other revised law shall be construed as references to the revised law or to that other law as revised."

and the provisions of sections 28 and 35(2) of the Interpretation Act, 1967 which read as follows:

"28. Where a written law repeals in whole or in part any former written law and substitutes other provisions therefor, subsidiary legislation made under the repealed law shall, insofar as it is not inconsistent with the substituted provisions, remain in force until revoked or replaced by subsidiary legislation made under the repealing law, and shall be deemed for all purposes to have been made thereunder."

"35(2). Where any written law or any provision of a written law is repealed and re-enacted (with or without modification), references in any other written law to the law or provision so repealed shall be construed as references to the re-enacted law or provision."

Briefly the case for the prosecution is that in the early hours of January 8, 1976 Chief Inspector (now Acting A.S.P.) Yeap Hooi San (PW 1) of C.I.D. Headquarters Johore, on information received that one Mustaffa bin Ahmad who could be located at No. 6B Jalan Tarom, Johore Bahru, was in possession of a .22 pistol, proceeded to that house accompanied by D.P.C. 2052 (now D.P. Kpl.) Syed Faisal bin Abdul Rahman (PW 4), D.P. Kpl. 11215 Sulaiman bin Awang and D.P.C. 32066 Shaari bin Abdullah. Before going there they had gone to Tampoi where they arrested a male Malay named Mohamed Isa who was found in possession of a firearm. They took him to Tampoi Police Station where PW 1 lodged a report and after that they took him to house No. 6B Jalan Tarom. When they arrived at the house at about 3.20 a.m. PW 1 knocked at the door and it was opened from inside by accused. PW 1 introduced himself as a police officer and they all entered the house. Apart from the accused 3 other males were found in the house, sleeping. They were Rosli bin Ismail, Baharom bin Rakam and Ridzuan bin Maidin. PW 1 checked their I/Cs and also searched their persons and the house. PW 1 asked accused where he kept the .22 pistol. Accused said that he had kept it in house No. 8B Jalan Dato Dalam, Johore Bahru and he subsequently led PW 1 and the police party to that house.

On arrival at the house at about 3.45 a.m. accused shook the front collapsible gate and called out "Rahim, Rahim". A male Malay came out of a room and walked up to the gate and at accused's request he unlocked it. That person was accused's elder brother named Abdul Rahim bin Ahmad (PW 3). PW 1 entered the house together with PW 4, first into the hall (marked A in the sketch plan (P5)) and after that into a room on the left-hand side (marked B in P5), led by accused. Accused went to the left-hand side of the room and took a key from the beam and with it he unlocked the padlock of the door (marked H in P5) leading to another room. They entered the 2nd room (marked C in P5) and accused led PW 1 to a cupboard. Accused opened the cupboard door and pointed to a clothings compartment where he said he kept the pistol. Accused removed the clothings and PW 1 then recovered a .22 double barrelled pistol (P2) in a holster (P2A) and 5 rounds of .22 ammunition (P3) from the compartment. He asked accused whether he had a licence or permit to hold the pistol and ammunition and accused told him that he had none. He then took accused to the Central Police Station where he lodged a police report (P4). On January 9, 1976 at about 9 a.m. PW 1 handed accused and also P2, P2A and P3 to Inspector Abdullah bin Hassan (PW 13).

The sketch plan (P5) was drawn and the keys to it (P5K) were prepared by PW1 on the morning of December 26, 1976, before the trial started, at the request of the Deputy Public Prosecutor, when he went to the house but did not enter it. He had not been to the house after January 8, 1976 until that morning.

As can be seen from his evidence as a whole PW 1 was a very confused witness whose memory often failed him and as pointed out by Defence Counsel, there are numerous discrepancies between his evidence and that of PW4.

According to Abdul Rahim bin Ahmad (PW 3) who had been residing in his grandmother's house at No. 8B Jalan Dato Dalam since about 4 years ago room B was his bedroom and room C was nominally occupied by the accused. Though he had left the house he still could occupy room B whenever he wanted to. There was a cupboard in room C in which accused had kept his clothings. Neither the cupboard nor the drawers or compartments in the cupboard were locked. There was no door between rooms B and C. There was only an opening shaped as a U upside down which he marked "H' in the dividing wall about 3' wide and 6' high. There was a door leading into room C from the inner part of the hall which he marked "E". He has also shaded the area covered by the hall "A" with oblique lines. Apart from him and the

accused his grandmother, his aunt and her husband and their children and his elder sister named Rahmah binti Ahmad also had access to rooms B and C. He also said that very early on the morning of January 8, 1976 he was awakened by accused's voice calling out "Rahim, Rahim" and knocks on the door which he marked "G" in P5 leading to his bedroom B. Door G was locked from inside and he unlocked it. Accused entered his bedroom B together with PW 4 whom he and accused had known before that morning, followed by PW 1. Accused then entered room C followed by the 2 others. He was asked by PW 1 to remain in his bedroom B and he did not know what happened inside room C. After some time all of them came out of the room C, walked past his bedroom B and went out of the house. He did not notice if any of them carried anything with him.

There are differences in the evidence which he gave in this Court and that given by him at the P.E. on August 10, 1976 in which Maanas was the accused record of which is P6 and he said that what he told this Court was the truth.

Inspector Abdullah bin Hassan (PW 13) was the I.O. in this case and on January 13, 1976 he handed P2 and P3 which he had earlier received from PW 1 to Chief Inspector Salleh bin Ismail (PW 2), Armaments Officer, Johore Police Contingent, and asked him to test them. PW 2 fired 2 rounds out of the 5 with the pistol and found that both of them were serviceable. According to him P2 would be effective within a distance of 30 yards. It is a real pistol but not commonly used in this country.

PW 13 had visited house No. 8B Jalan Dato Dalam only at 9.30 a.m. on December 28, 1976, a few days after the trial had commenced. He was accompanied by Mr. Kirat Singh (PW 9), the Senior Chemist and P.C. 29422 (PW 12), the police photographer. At his request PW 9 examined the arch-like opening marked "H" between rooms B and C. It was 2'11" wide and 6'8" high at its highest point and the wall surrounding the edges of the opening was 5" which was about .1" thicker than the other parts of the wall. PW 9 also saw irregular lines at the structure and the distances from the edges of the Opening to the irregular lines varied from 1" to 7". He examined the plasters on both sides of the irregular lines and found the following significant differences between them: (1) *Appearance:* The plaster (P7) taken from between the irregular lines and the edges of the opening was grey while the colour of the broken plaster (P8) taken from the other side was yellowish brown (2) *Hardness:* P7 was extremely hard and difficult to break with a hammer while P8 was soft and a slight knock with a hammer caused it to break into small pieces of sandy particles. He, however, said that he could not tell the difference in the ages of the 2 plasters, not even if one was older than the other and therefore would not know when the opening was made or even if it had replaced a door.

On instruction of PW 13, PW 12 took 3 photos of the house – P9A, P9B and P9C. P9A shows the house taken from the outside of the compound gate. P9B shows the opening between rooms B and C taken from room C and P9C also shows the opening but taken from a different angle.

On January 13, 1976 PW 13 had recorded a statement (P 11) from the accused at his office in the Central Police Station which he said was made under the amended section 113 of the Criminal Procedure Code and section 75 of the Internal Security Act. Accused was normal and he could see no sign to show that he had been assaulted. He did not induce, threaten or promise him anything to make the statement. He gave the statutory caution and explained to accused that the case against him was a capital offence and he warned him that he should think properly before answering questions put to him. Accused indicated to him that he would tell the truth and he understood the caution administered to him.

There was a trial within a trial before P11 was admitted. According to accused (DW 1) before PW 13 recorded his statement 2 or 3 Malay police officers had taken him to their office and asked him to make a statement about the pistol. He at first said he refused but later said that he agreed to it. The last occasion he was asked by the 2 or 3 Malay police officers was two days before PW 13 recorded P11 on January 13, 1976. He was also told that a statement was to be made to PW 13 and that PW 13 had also told him when he made his statement that he was to include what the 2 or 3 officers had told him to say. They asked him to say that the pistol was obtained from Cpl. Maanas and Captain Hamzah and told him that if he were to follow what they said he would be charged under the old charge which he understood to mean that if he was found guilty he would only be imprisoned and not hanged. He was also told that he was to be a witness in Cpl. Maanas' case. At first he was under the impression that he was only to be a witness in that case but by the time he gave evidence at the P.E. in that case on May 17, 1976

he had already been charged in this case under the Internal Security Act and therefore denied that he had said that he had bought the pistol from Cpl. Maanas. If he had been charged under the old charge and not under the Internal Security Act he would tell the truth, *i.e.* follow the statement he made to PW 13.

I admitted the statement (P11) because it did not appear to me then that the making of P11 had been caused by inducement, threat or promise within the meaning of proviso (a)(i) of section 75(1) of the Internal Security Act which reads as follows:

"Provided that –

(a) no such statement shall be admissible or used as aforesaid –

(i) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person, proceeding from a person in authority and sufficient in the opinion of the court to give the person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him;"

The gist of P11 is that about 4 weeks before he made it Maanas bin Mohd. Jelas had asked him to keep a pistol temporarily until he *i.e.* Maanas could get a buyer for it at a price of $500 and that after Maanas had given him the pistol together with its holster and 5 rounds of ammunition he returned to house 8B Jalan Dato Dalam and kept them in a cupboard in the house.

Regulation 13 of the Essential (Security Cases) Regulations, 1975 reads as follows:

"When the case for the prosecution is closed, the court shall call on the accused to enter on his defence."

Accused gave evidence on oath. According to him on the morning in question he was sleeping in house No. 6B Jalan Tarom with his wife, Baharom and Rosli. In another room in the house was Redzuan. At about 3.20 a.m. he was awakened when some one called out his nickname "Banjo". He opened the front door of the house and he saw Mohd. Isa, PW 4 and PW 1. After checking his I/C PW 1 told him that he had a .22 pistol. He told him that he did not have it. PW 1 said that he knew that the pistol was not in the house but was in a house at Jalan Dato Dalam. After the other persons had been checked PW 1 asked him to show the house at Jalan Dato Dalam. He agreed to do so and led the police party to that house.

The compound gate of the house shown in Photo P9A was not locked. He opened the gate and they proceeded to the front collapsible gate of the house. The gate was locked. He took the key which was as usual hanging at the deer horn inside the house by putting his hand through a gap in the collapsible gate and unlocked the collapsible gate. They entered the house into the hall and he called out "Rahim, Rahim" and knocked at the door leading to Rahim's room. Hashim (PW 3) opened the door and they all entered PW 3's room B. From room B they entered room C while PW 3 remained in room B. Photos P9B and P9C show the wall and arched opening between rooms B and C. There was no door at that opening since his childhood when he used to visit the house. He started to occupy room C only one year before he was arrested. PW 1 and 2 or 3 others but not PW 4 ransacked (searched) room C. There were 3 cupboards none of which was locked and one of which was used for keeping clothings. While the search was being made he saw PW 1 hold a package which PW 1 told him he had found in a cupboard. The package was wrapped with paper. From the house they all went to the Central Police Station. When he first saw the package in room C it had not been opened and he did not know its contents then. Neither PW 1 nor anybody else told him that the package contained the pistol. When he saw the package at the Police Station it was already unwrapped and that was the first time he saw the pistol and ammunition.

Room C was his room but he ceased to stay there about 6 months before his arrest. He still kept some of his clothings there. His grandmother would not object to his friends going into room C during his absence.

While in police custody PW 13 recorded his statement on the afternoon of January 13, 1976. He did not tell PW 13 the whole truth, part of what he said was not true. All the parts dealing with Maanas and the pistol were not true. He had made those untrue parts in his statement because they were suggested by the police officers who saw him before he made the statement and PW 13 himself had asked him to follow what was suggested by them. They told him that if he were to give the statement as suggested by them it would be easier for them to press Maanas at the trial. He had implicated both Maanas and Mohamed Isa because the police officers told him to say that and that he would be made a witness and

charged under the old charge.

Accused also called his elder sister Rahmah binti Ahmad (DW 3) and his aunt's husband Kassim bin Ahmad (DW 4) who had been living in house No. 8B Jalan Dato Dalam for the last 10 and 15 years respectively. According to them the arched opening shown in photos P9B and C and marked H in P5 had been there since before they started to stay there and that as far as they knew there was never a door there.

Regulation 17 reads as follows:

"The Court shall decide on the guilt or innocence of the accused only at the conclusion of the case for the defence and it shall so decide upon hearing and considering the evidence of both the prosecution and the defence as a whole, having regard to the justice of the case, without regard for the technicalities of the rules of evidence or procedure, or for any defect concerning the charge."

The information received by PW 1 had not been reduced to writing and as PW 1's memory does not appear to me to be reliable I am not prepared to give any weight to what he told the Court regarding that information. Even the covering police report made by him (P4) does not state what the information was. Furthermore according to PW 4 it was he who received the information from his informer and he recorded it in his diary. No evidence, however, was given of what he had actually recorded in his diary. Regulation 24 which deals with such information reads as follows:

"24. (1) Any person may give information relating to a security offence to a police officer or other public officer and the identity of the informant giving such information shall at his request be kept secret.

(2) A report setting out the said information shall be admissible in evidence without the informant being required to give evidence, and the court shall give due weight and consideration to such information."

Even though PW 1 and PW 4 were in agreement that when questioned about the pistol accused had mentioned house No. 8B Jalan Dato Dalam there is still contradiction between the evidence of PW 1 and PW 4 as to what accused actually said. According to PW 1 accused said that he had kept it in a house No. 8B Jalan Dato Dalam, Johore Bahru while according to PW 4 accused said that the pistol was in his mother's house at No. 8B Jalan Dato Dalam. As opposed to this, the contention of accused is that the police came to see him at his Jalan Tarom house where PW1 told him that he had information that he had a firearm in a house at Jalan Dato Dalam and asked him to take them to that house. He led the police there because that was the only house in Jalan Dato Dalam with which he was connected. There is also contradiction between the evidence of PW 1 and PW 4 as to the recovery of the exhibits, for whereas PW 1 said that he could see P2 and P3 straightaway after accused had lifted the clothings from the compartment PW 4 said that what he saw was a package wrapped with paper and that he knew its contents to be P2 and P3 only after PW 1 had removed the package from the compartment and opened it. I consider these to be material discrepancies and after considering the evidence as a whole I am inclined to accept accused's version of what happened, particularly in the light of my finding that there was no door but only an opening between rooms B and C. The evidence given by the Chemist (PW 9) does not assist the prosecution and there is the evidence given by DW3 and DW 4 to substantiate accused's contention that the arch-like opening was already there when they started to live in the house 10 years and 15 years ago respectively. It is unfortunate that the police had not visited the scene as soon as possible and such failure should not in my view penalize accused. Accused is charged with very serious offences and I must say that I am not prepared to convict him merely on the evidence of PW 1 and PW 4.

There remains the cautioned statement (P11). I had earlier admitted P11 after the trial within a trial because I then considered that there was not sufficient evidence on which I could find that it appeared to me that there was any inducement *etc.* After hearing the evidence as a whole I am no longer sure about this. After I have accepted accused's evidence on a number of important matters in preference to that given by PW 1 and PW 4 his evidence as a whole has become more reliable. Again in the trial within a trial PW 13 had said that he had explained to accused that the case against him was a capital offence. P11 shows that one of the questions put to accused was whether he knew if he had committed an offence for possessing the pistol and ammunition without a licence to which accused replied "yes". In view of this question it is now questionable whether PW 13 in fact gave the warning as alleged, *i.e.* that he (accused) had committed a capital offence. This would affect PW 13's credibility to a certain extent and would lend credence to accused's contention that not only was he told that he would be a witness in Maanas' case but also that he would be charged with a lesser offence if he were to cooperate with the police and say what the police officers had suggested to him to say. The facts

that P11 was only recorded on January 13, though he was arrested on January 8, 1976 and that accused had been called as a witness but had not given evidence in accordance with P11 at the P.E. at which Maanas was the accused after accused himself had been charged under the I.S.A. now become very significant and I am no longer satisfied beyond reasonable doubt that P11 was voluntarily made by accused. The contents of P11 are therefore no longer relevant and as such no weight can be given to them.

I accordingly acquit and discharge accused on both the charges.

Acquitted and discharged.

Solicitors: *R.K. Menon & Co.*

LAU EE EE v. TANG KING KWONG

[O.C.J. (Chong Yik Liong J.) November 22, 23 & December 21, 1983]

[Sibu - Civil Suit No. 2 of 1978]

Tort – Road accident – Negligence – Full liability admitted – Assessment of damages.

Damages – Multiple injuries – Pain and suffering – Loss of amenities – General damages – Assessment.

In this case, the plaintiff, aged 19 at the time of accident, claimed against the defendant damages for personal injuries and loss suffered by her as a result of a road accident on August 25, 1976 when a car driven by the defendant collided with her and knocked her down while she was standing on the grass verge of the road. The defendant admitted full liability for negligence and the sum of $92.00 for special damages. The only question for determination is on the quantum of general damages for pain and suffering and loss of amenities. The plaintiff sustained the following injuries:

(1) fracture shaft of left humerus;
(2) scalp laceration;
(3) fractures of transverse processes and compression fractures of 3rd and 4th lumbar vertebrae;
(4) fracture of the right mandible; and
(5) intraperitoneal bleeding from arterial bleeding in a liver laceration.

She was hospitalised for 40 days, from August 25, 1976 to October 4, 1976, and she underwent outpatient treatment periodically on 17 occasions over a period of 3½ months.

Held, allowing the plaintiff's claim: (1) the total sum of $25,000 as damages with interest at 6% p.a. from date of service of writ to date of judgment, and costs, under the following heads:

(a) scalp laceration – $500.
(b) fracture of left humerus – $4,000.
(c) fractures of transverse processes and compression fractures of 3rd and 4th lumbar vertebrae – $18,000.
(d) fracture of right mandible – $6,000.
(e) liver laceration – $5,000.

From the above total sum of $33,500, a sum of $8,500 was deducted for overlapping, giving a net figure of $25,000;

(2) a sum of $92 was awarded as special damages with interest at 3% p.a. from date of accident to judgment;

(3) general and special damages will carry statutory interest at 8% p.a. from date of judgment to date of payment.

Cases referred to:

(1) *Zainah binte Abdullah & Ors.* v. *Lim Liang Hook* [1975] 2 M.L.J. iii.
(2) *Lau Kiu Kwong* v. *Government of Malaysia & Anor* – Sibu Civil Suit No. 39 of 1978 (*Unreported*).
(3) *Hassan bin Mat Saman* v. *Tengku Mat @ Engku Mat bin Engku Mik & 3rd Party – Dass* on Quantum in Accident Claims, Vol. 2 p. 97.
(4) *Hamzah bin Abdul Ghani* v. *Verghese Thomas* [1981] 2 M.L.J. 329.
(5) *Appandurai @ Raju s/o Varthan* v. *Lim Puk Tow – Dass* on Quantum in Accident Claims, Vol. 1 p. 402.
(6) *M. Alagappan s/o Muthuraman* v. *The Government of the Republic of Singapore* [1967] 1 M.L.J. xl.
(7) *Yasin bin Wahab* v. *Loo Kok Wai* [1980] 2 M.L.J. 43.
(8) *Muslim bin Arip* v. *Gue Kee Peng* [1975] 1 M.L.J. xlv; *Dass* on Quantum in Accident Claims, Vol. 2 p. 312.
(9) *Siow Choo Foo* v. *Lee Peng Lay & Anor.* [1981] 2 M.L.J. 336.

CIVIL SUIT.

Ting Sing Chuan for the plaintiff.
George Lim for the defendant.

Cur. Adv. Vult.

Chong Yik Liong J. : This is an action for damages for personal injuries and loss suffered by the plaintiff as a result of a road accident which took place at Queensway, Sibu on August 25, 1976 when a motor car S4827 driven by the defendant collided with the plaintiff and knocked her down while she was standing on the grass verge of the said road.

At the commencement of the hearing, the defendant admits full liability for negligence for the accident, and also admits the plaintiff's claim for special damages amounting to $92.00. The only question which the Court has to determine is on the quantum of general damages for pain and